## UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
R.J. REYNOLDS TOBACCO COMPANY, a corporation.	)	Docket No. 9285

## ORDER REGARDING COMPLAINT COUNSEL'S MOTION TO STRIKE EXPERT WITNESSES

Having considered complaint counsel's motion to strike expert witnesses dated October 8, 1998, as well as oral argument at the pretrial conference held that same day, IT IS ORDERED that complaint counsel's motion is DENIED with regard to Respondent's expert witnesses John F. Geweke, Donald L. Martin, Michael J. Houston, and Lucy Henke. Complaint counsel have not shown that the expected testimonies of these witnesses are cumulative, nor have complaint counsel shown that they will be unduly burdened by having to take the depositions of these experts and cross examine them at trial.

It is further ORDERED that Respondent will produce by October 14, 1998 all documents responsive to complaint counsel's subpoenas ducas tecum dated September 24, 1998 to Dr. Geweke and Dr. Martin. This obligation is not to be construed, however, as a prohibition on any expert performing additional work, to the extent allowed by the Order Regarding Discovery Schedule Pursuant to Rule 3.21(c)(Dec. 10, 1997) at ¶ 6.2 Respondent's and complaint counsel's experts will continue to be available to be deposed regarding any additional work undertaken up to, and, if necessary, following the commencement of the trial in this proceeding. Order Regarding Complaint Counsel's Motion to Reschedule Trial Date (Sept. 30, 1998) at ¶ 6. Respondent will produce by October 3, 1998 any remaining materials responsive to complaint counsel's subpoena ducas tecum directed to Dr. Henke dated September 24, 1998. Respondent will also produce by October 13, 1998 any remaining materials responsive to complaint counsel's subpoena ducas tecum directed to Dr. Houston dated September 24, 1998.

I will reserve my ruling with regard to complaint counsel's motion to strike Respondent's expert witness Martin Redish until after I have received Respondent's opposition to complaint counsel's motion.

The December 10, 1997 Order states in pertinent part: "If any expert performs additional work that serves as a basis for his opinion (other than reading or listening to the testimony of other witnesses) after the expert's deposition but prior to trial testimony, the opposing party will be afforded a reasonable opportunity to depose the expert with respect to such additional work."

Complaint counsel is also CRDERED to immediately provide Respondent with a copy of complaint counsel exhibit no. 2066. In the alternative, complaint counsel may identify a Federal Trade Commission employee who will provide clear instructions regarding the retrieval of the data contained within CX 2066 from the internet.

Finally, it is ORDERED that all motions filed after October 9, 1998 shall be preceded by a conference at which I will preside. The purpose of these conferences is to attempt to resolve expeditiously issues that arise leading up to and continuing through trial.

Dated: October 16, 1998

James P. Timony
Chief Administrative Law Judge